

² Appellant has submitted additional medical evidence on appeal, but the Board can review only evidence that was before OWCP at the time of the September 2, 2014 on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On August 2, 2013 appellant, then a 48-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2013 she sustained an injury at work when she sidestepped a tub of mail and twisted her back. She stated that she felt pain in her lower back and down her legs. Appellant did not stop work.

Appellant submitted an August 1, 2013 report from Dr. Lee Zohn, a chiropractor, who provided a history of a June 8, 2013 injury and results on examination. Dr. Zohn diagnosed probable reinjury to L5-S1 disc herniation, intermittent spasm, lumbosacral sprain/strain, and lumbar segmental joint dysfunction. He indicated that a lumbar magnetic resonance imaging (MRI) scan would be requested.

By letter dated August 12, 2013, OWCP requested that appellant submit additional evidence. It noted that a chiropractor was not a physician unless there is a diagnosed spinal subluxation as demonstrated by x-ray.

In a decision dated September 13, 2013, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish the claim.

On June 26, 2014 appellant requested reconsideration of her claim. She submitted a November 11, 2013 report from Dr. Mark Lapp, a Board-certified orthopedic surgeon, who stated that she was seen for chronic back and leg pain. Dr. Lapp stated that appellant had reported that she reinjured her back in the summer when she twisted, and her biggest current complaint was right leg pain. He reported that x-rays showed degenerative disc disease at L4-5 and L5-S1, with very slight rotary subluxation at L3-4. Dr. Lapp also stated that an MRI scan showed more advanced degenerative disc disease at L4-5. He diagnosed acute chronic low back pain, multiple level degenerative disc disease, more recent right leg pain, hip, and low back pain.

In a report dated February 10, 2014, Dr. Lapp indicated that an electromyogram was normal, with an MRI scan showing degenerative disc disease at L3-S1, worse at L4-5. He diagnosed acute chronic low back pain, multiple level degenerative disc disease, right leg pain, degeneration of intervertebral disc, sciatica, and spinal stenosis.

Dr. Zohn later diagnosed on February 14, 2014 lumbar disc derangement with radiculopathy, spasm, and lumbar joint dysfunction. He opined that the work injury of June 8, 2013 caused a reinjury to an already compromised lumbar spine. In a report (Form CA-20) dated February 14, 2014, Dr. Zohn diagnosed disc herniation with right radiculopathy, leg weakness, and intermittent spasm. He checked a box "yes" as to causal relationship with employment.

By decision dated September 2, 2014, OWCP reviewed the case on its merits. It found that the medical evidence was insufficient to establish a diagnosed condition as causally related to the June 8, 2013 employment incident.

LEGAL PRECEDENT

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”³ The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of an in the course of employment.”⁴ An employee seeking benefits under FECA has the burden of proof to establish that he or she sustained an injury while in the performance of duty.⁵ In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁶

OWCP’s procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁷ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician’s affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁸

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁹

5 U.S.C. § 8101(2) provides that the term “‘physician’ ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.”¹⁰

³ 5 U.S.C. § 8102(a).

⁴ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁵ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁶ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

⁸ *Id.*, Chapter 2.805.3(d) (January 2013).

⁹ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

¹⁰ 5 U.S.C. § 8101(2). *See also* 20 C.F.R. § 10.5(bb): “Subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.”

ANALYSIS

In the present case, appellant alleged that she sustained an injury on June 8, 2013 when she twisted while sidestepping a tub of mail. OWCP accepted that the employment incident occurred as alleged. The issue is whether there is sufficient medical evidence to establish causal relationship between a diagnosed condition and the employment incident.

Appellant initially sought treatment from Dr. Zohn, a chiropractor on August 1, 2013. However, as shown in legal precedent, Dr. Zohn cannot be considered a physician under FECA unless he diagnoses a subluxation as demonstrated by x-ray to exist. He did not review x-rays or diagnose a subluxation based on those x-rays. The August 1, 2013 and February 14, 2014 reports did not refer to a review of x-rays and did not provide a subluxation diagnosis.¹¹ Since Dr. Zohn did not diagnose a subluxation as demonstrated by x-rays to exist, his reports are of no probative value as he is not a physician under FECA.¹²

The attending orthopedic surgeon, Dr. Lapp, did not provide an opinion on causal relationship between a diagnosed condition and the employment incident in either his November 13, 2013 or February 10, 2014 reports. In his November 13, 2013 report, he provides a brief reference to appellant reinjuring her back during the previous summer, without providing a clear description of the June 8, 2013 incident. Dr. Lapp does not provide an opinion, supported by sound medical rationale, on causal relationship between a specific diagnosed condition, and the employment incident.

The record does not contain a medical report from a physician with a complete factual and medical background, and a medical opinion supported by medical rationale explaining the nature of the relationship between a diagnosed condition and the June 8, 2013 employment incident. Appellant did not meet her burden of proof this case and OWCP properly denied her claim.

On appeal, appellant states that her claim was initially denied because she did not timely notify her supervisor. However, the record reflects that the claim for compensation was denied because the medical evidence of record was insufficient to establish the claim. For the reasons noted above, the medical evidence of record was insufficient to establish the claim. Appellant may submit new evidence or argument with a written application for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established an injury in the performance of duty on June 8, 2013.

¹¹ The only reference to x-rays was from Dr. Lapp on November 11, 2013. The record does not contain an x-ray report, nor is there any indication that Dr. Zohn reviewed the x-rays.

¹² See *L.B.*, Docket No. 14-2005 (issued January 28, 2015); *E.B.*, Docket No. 09-1055 (issued December 14, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 2, 2014 is affirmed.

Issued: April 6, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board